

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2444 OF 2006

M/s.Heena Wines.

...Petitioner.

Vs.

The Collector of Mumbai & Ors.

...Respondents.

....

Mrs.Veena Thadani with Mr. Vishal Thadani for the Petitioner.

Mr. Anjad Syeed, AGP for the Respondents.

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CORAM : DR.D.Y.CHANDRACHUD, J.

October 4, 2006.

P.C.

Rule, by consent of Counsel returnable forthwith.

Counsel appearing on behalf of the Respondents waives service.

By consent of Counsel and at their request taken up for hearing
and final disposal.

The Petitioner has been carrying on the business of retail sale of Indian Made Foreign Liquor. An F.L. II licence has been granted by the Collector, Mumbai Suburban District, under the Bombay Prohibition Act, 1949, in respect of premises bearing Shop No.2 situated at Pali Darshan, Bandra (West), Mumbai-400 050. The Petitioner vacated the premises at Bandra on 1st April

2005 and sometime in the month of May, is stated to have procured alternate premises at Goregaon (East) on a leave and licence arrangement. The owner of the premises is stated to have granted a No Objection Certificate to the Petitioner for carrying on retail business in Indian Made Foreign Liquor. On 11th May 2005, the Petitioner applied to the First Respondent for shifting the existing FL-II licence from the premises at Bandra to the new location at Goregaon (East). It has been stated that in the meantime, the Petitioner paid licence fees for the year 2005-06 amounting to **Rs.3.53** lakhs pending a decision on the application for shifting of the situs of the licence. The application filed by the Petitioner was rejected by an order dated 26th July 2006 passed by the First Respondent. The First Respondent informed the Petitioner that the State Government has on 3rd July 2006 rejected the application of the Petitioner on the ground that his licence which was to be transferred from one Taluka to another within the Mumbai Suburban District, was “not in conformity with the 50% quota prescribed.”

The Petitioner has annexed to the proceedings before the Court a copy of a notification dated 28th April 2005 under which

the Bombay Foreign Liquor (Second Amendment) Rules, 2005 were notified. By the amendment, sub-rule (4) was introduced in Rule 25. Under sub-rule (4), it is now provided that a licensed shop shall not be shifted by a retail licensee to any other place within a taluka without the prior approval of the Collector. Clause (b) of sub-rule (4) requires the prior approval of the Commissioner for shifting of licensed premises from one taluka to another taluka in the same district. Clause (b) of sub-rule (4) of Rule 25 as amended provided as follows :

“(b) A licensed shop shall not be shifted by retail licensee to any place from one taluka to another taluka of the district without prior approval of the Commissioner:

Provided that, the number of licensed shops for such shifting shall not exceed 15% of the total existing licensed shops in any district which would be inclusive of the licensed shops already shifted with prior approval of the Government or the Commissioner before the date of publication of these rules.”

By the proviso to clause (b) a ceiling was introduced on the total number of licensed shops that can be shifted; the ceiling being that

the total number shall not exceed 15% of the existing licensed shops in any district. By a notification dated 13th July 2006, the State Government promulgated the Bombay Foreign Liquor (Third Amendment) Rules, 2006. In clause (b) of sub-rule (4) of Rule 25 of the principal Rules, the following amendment was made:

“In rule 25 of the Bombay Foreign Liquor Rules, 1953 in sub-rule (4), -

-(i) in proviso of clause (b), after the words “any District” the words “excluding Mumbai City and Mumbai Suburban District” shall be inserted.”

Moreover, after the existing proviso to clause (b), a fresh proviso came to be added :

“Provided further that, any licensed shop shall not be shifted within the Mumbai City and Mumbai Suburban District, without prior approval of the Government.”

The Learned AGP stated that though the impugned order of the First Respondent was issued on 26th July 2006, which was after the notification dated 13th July 2006, the order of the State Government was passed on 3rd July 2006 which is prior to the amendment. Be that as it may, it is now clear that as a result of

the amendment which is caused to the Rules with effect from 13th July 2006, a material change has been made in the provisions of sub-rule (4) of Rule 25. The ceiling that has been prescribed by the proviso to clause (b) in respect of the total number of licensed shops that can be shifted does not apply to Mumbai City and Mumbai Suburban District. However, the prior approval of the State Government is necessary for any such shifting within Mumbai and Mumbai Suburban District.

In view of the amendment which was brought about, it would be appropriate if the application filed by the Petitioner is considered afresh in accordance with law. In order to facilitate a fresh decision, the impugned orders of the First Respondent dated 26th July 2006 and of the State Government dated 3rd July 2006 are quashed and set aside. Upon remand, a fresh decision on the application filed by the Petitioner shall be taken within a period of four weeks of the date on which a certified copy of this order is produced before the State Government by the Petitioner. The petition is accordingly disposed of. There shall be no order as to costs.

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